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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM DONALD JOHNSON,

Defendant and Appellant.

E074580

(Super.Ct.No. BAF1400096)

OPINION

APPEAL from the Superior Court of Riverside County. Thomas E. Kelly, Judge.  
(Retired judge of the Santa Cruz Super. Ct. assigned by the Chief Justice pursuant to  
art. VI, § 6 of the Cal. Const.) Affirmed.

Allen G. Weinberg, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Defendant and appellant, William Donald Johnson, filed a petition for resentencing pursuant to Penal Code section 1170.95,<sup>1</sup> which the court dismissed. After defendant filed a notice of appeal, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and one potentially arguable issue: whether the court erred in denying defendant's petition. We affirm.

## I. FACTUAL AND PROCEDURAL BACKGROUND

“On December 29, 2013, a vehicle driven by defendant veered into and across oncoming traffic lanes, striking a bicycle travelling in the opposite direction in the bicycle lane. Defendant did not slow or stop after the collision. The bicyclist died on January 11, 2014, of injuries sustained in the collision.” (*People v. Johnson* (2016) 6 Cal.App.5th 505, 507.)

A jury convicted defendant of gross vehicular manslaughter while intoxicated and hit and run with injury. The jury also found true two enhancement allegations: defendant had fled the scene and the collision resulted in a fatality. The jury did not reach a unanimous verdict on the other charged count, second degree murder. The trial court granted a mistrial with respect to that count. On retrial of the murder count, a new jury found defendant guilty of second degree murder. (*People v. Johnson, supra*, 6 Cal.App.5th at p. 507.)

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<sup>1</sup> All further statutory references are to the Penal Code.

Defendant appealed the conviction. On appeal, this court reversed the second degree murder conviction. (*People v. Johnson, supra*, 6 Cal.App.5th at p. 516.) On August 31, 2017, pursuant to a plea agreement, defendant pled guilty to second degree murder.

On December 13, 2019, defendant filed a petition for resentencing. The People filed opposition contending the petition should be denied because defendant was the actual killer, and the People had not proceeded under a natural and probable consequences or felony murder theory. At the hearing on defendant's petition, the People moved to dismiss the petition because, based upon the facts recounted in this court's opinion, defendant was the actual killer.<sup>2</sup> Defense counsel did not disagree with the facts as derived from this court's opinion, but objected for the record. The court dismissed the petition.

## II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

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<sup>2</sup> The opinion formed part of the factual basis of defendant's guilty plea.

### III. DISPOSITION

The order denying defendant's petition for resentencing pursuant to section 1170.95 is affirmed.

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McKINSTER  
J.

I concur:

RAMIREZ  
P. J.

[*P. v. Johnson*, E074580]

MENETREZ, J., Dissenting.

The appellate review procedures under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*), in which we review the record ourselves to determine whether there are any arguable issues, apply “only to a defendant’s first appeal as of right.” (*People v. Thurman* (2007) 157 Cal.App.4th 36, 45; *People v. Serrano* (2012) 211 Cal.App.4th 496, 498 (*Serrano*).) *Wende/Anders* review is highly unusual and rooted in the constitutional right to counsel, and courts have repeatedly declined to apply it in other contexts. (*Pennsylvania v. Finley* (1987) 481 U.S. 551, 554-555; *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 535; *In re Sade C.* (1996) 13 Cal.4th 952, 959; *People v. Kisling* (2015) 239 Cal.App.4th 288, 290; *People v. Dobson* (2008) 161 Cal.App.4th 1422, 1425; *People v. Taylor* (2008) 160 Cal.App.4th 304, 307-308; *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570; 579.) Because this appeal concerns a postjudgment proceeding in which there is no constitutional right to counsel, appellant has no right to *Wende/Anders* review. Because appellant’s counsel filed an opening brief raising no issues, and appellant was notified but did not file a supplemental brief, we should not affirm but rather should dismiss the appeal as abandoned. (*Serrano*, 211 Cal.App.4th at pp. 503-504.) I therefore respectfully dissent.

MENETREZ

J.